

SOLICITOR

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	DEC 19 2008 U.S. PATENT & TRADEMARK OFFICE	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---	---

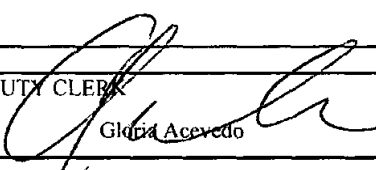
In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 08-05543 EMC	DATE FILED 12/10/08	U.S. DISTRICT COURT Northern District of California, San Francisco Division
PLAINTIFF BROADCOM CORPORATION, ET AL		DEFENDANT WI-LAN, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,549,759		
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK Richard W. Wicking	(BY) DEPUTY CLERK  Gloria Acevedo	DATE December 16, 2008

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

COPY

ORIGINAL FILED

DEC 1 2008

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

1 Bob Steinberg (S.B.N. 126407)
2 bob.steinberg@lw.com
3 LATHAM & WATKINS LLP
4 355 South Grand Avenue
5 Los Angeles, CA 90071-1560
6 Telephone: (213) 485-1234
7 Facsimile: (213) 891-8763

8 Sean S. Pak (S.B.N. 219032)
9 sean.pak@lw.com
10 LATHAM & WATKINS LLP
11 505 Montgomery Street, Suite 2000
12 San Francisco, California 94111-6538
13 Telephone: (415) 391-0600
14 Facsimile: (415) 395-8095

15 Michael W. De Vries (S.B.N. 211001)
16 mike.devries@lw.com
17 Eli T. Ticatch (S.B.N. 234108)
18 eli.ticatch@lw.com
19 Joseph K. Liu (S.B.N. 216227)
20 joseph.liu@lw.com
21 LATHAM & WATKINS LLP
22 650 Town Center Drive, 20th Floor
23 Orange County, California 92626-1925
24 Telephone: (714) 540-1235
25 Facsimile: (714) 755-8290

26 Attorneys for Plaintiff
27 BROADCOM CORPORATION

28 Sec Signature Page For Complete List of
Represented Parties (L.R. 3-4)

C08 05543

EMC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BROADCOM CORPORATION and
ATHEROS COMMUNICATIONS, INC.,

Plaintiffs,

v.

WI-LAN, INC.,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY
JUDGMENT

DEMAND FOR JURY TRIAL

1 **COMPLAINT**

2 Plaintiffs Broadcom Corporation ("Broadcom") and Atheros Communications, Inc.
3 ("Atheros") (collectively, "Plaintiffs") for their Complaint against Wi-LAN, Inc. ("Wi-LAN")
4 hereby demand a jury trial and allege as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for declaratory judgment of non-infringement, invalidity, and
7 unenforceability of United States Patent No. 6,549,759 (the "759 Patent") pursuant to the
8 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35
9 U.S.C. § 100 *et seq.*, and for such other relief as the Court deems just and proper.

10 **INTRADISTRICT ASSIGNMENT**

11 2. This action includes patent-based declaratory judgment claims arising in connection with
12 conduct at least partially occurring in or directed to Santa Clara County. Moreover, Broadcom has
13 substantial operations and facilities located in Sunnyvale, San Jose, and Santa Clara, California.
14 Atheros is headquartered in, and has substantial operations and facilities located in, Santa Clara
15 County. Accordingly, assignment to the San Jose Division is appropriate.

16 **PARTIES**

17 3. Plaintiff Broadcom is a corporation organized and existing under the laws of the State of
18 California and having its principal place of business at 5300 California Avenue, Irvine, California,
19 92617, and is doing business in this District.

20 4. Plaintiff Atheros is a corporation organized and existing under the laws of the State of
21 Delaware and having its principal place of business at 5480 Great America Parkway, Santa Clara,
22 California, 95054-3644, and is doing business in this District.

23 5. On information and belief, defendant Wi-LAN, Inc., is a corporation organized and
24 existing under the laws of Canada and having its principal place of business at 11 Holland Avenue,
25 Suite 608, Ottawa, Ontario, Canada.

26 6. As alleged herein, Wi-LAN has engaged in various acts in and directed to California.
27
28

JURISDICTION AND VENUE

7. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367, 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

8. Wi-LAN purports to be the owner of all rights, title, and interest in and to the '759 Patent. Wi-LAN has made statements and representations threatening to assert the '759 Patent against Plaintiffs' products used and/or designed for use in products with wireless capability. Furthermore, Wi-LAN has confirmed its ability and willingness to file suit. Plaintiffs have produced and sold products used and/or designed for use in products with wireless capability. Plaintiffs have not infringed and do not infringe, either directly or indirectly, any valid and enforceable claim of the '759 Patent, either literally or under the doctrine of equivalents, nor are they aware of any infringement of the '759 Patent. A substantial controversy exists between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

9. This Court has personal jurisdiction over Wi-LAN. Wi-LAN has conducted business in and directed to California, including pertaining to the '759 Patent, and has engaged in various acts in and directed to California. Additionally, inventors and former assignees of the '759 Patent, and attorneys responsible for the prosecution of the '759 Patent, are believed to be located in California. Wi-LAN is in the business of asserting patent infringement claims and suing companies for patent infringement. In connection with that business, Wi-LAN has targeted and met with companies in Santa Clara county.

THE PATENT

10. The '759 patent is entitled "Asymmetric Adaptive Modulation in a Wireless Communication System," and bears an issuance date of April 15, 2003. A copy of the '759 patent is attached hereto as Exhibit 1.

COUNT I - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,549,759

11. Plaintiffs repeat and reallege the allegations in paragraphs 1-10 as though fully set forth

1 herein.

2 12. Plaintiffs have not infringed and do not infringe, directly or indirectly, any valid and
3 enforceable claim of the '759 patent.

4 13. As a result of the acts described in the foregoing paragraphs, there exists a substantial
5 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

6 14. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain their
7 rights regarding the '759 patent.

8
9 **COUNT II - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,549,759**

10 15. Plaintiffs repeat and reallege the allegations in paragraphs 1-14 as though fully set forth
11 herein.

12 16. The '759 patent is invalid for failure to meet the conditions of patentability and/or
13 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

14 17. As a result of the acts described in the foregoing paragraphs, there exists a substantial
15 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

16 18. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain their
17 rights regarding the '759 patent.

18
19 **COUNT III - DECLARATION OF UNENFORCEABILITY OF U.S. PATENT NO. 6,549,759**

20 19. Plaintiffs repeat and reallege the allegations in paragraphs 1-18 as though fully set forth
21 herein.

22 20. On information and belief, individuals subject to the duty of candor under 37 CFR 1.56
23 ("Applicants") engaged in inequitable conduct by withholding or misstating material information
24 with intent to deceive the USPTO in connection with prosecuting the '759 patent, rendering the '759
25 patent unenforceable.

26 21. On information and belief, during prosecution of the '759 patent, Applicants were aware
27 of prior art that they knew was material to patentability, including prior public disclosures material
28

1 to patentability that they deliberately failed to properly disclose to the USPTO with intent to deceive.

2 22. For example, on or around July 7, 2000, a document entitled "Media Access Control
3 Layer Proposal for the 802.16.1 Air Interface Specification" was submitted to the 802.16 MAC
4 Subgroup by Glen Sater, of Motorola, and Kenneth L. Stanwood, of Ensemble Corporation.
5 Kenneth L. Stanwood is a named inventor on the '759 patent.

6 23. Applicants' public disclosures, including those described above, were material to the
7 patentability of the application that issued as the '759 patent. On information and belief, during
8 prosecution of the application that issued as the '759 patent, with intent to deceive the USPTO,
9 Applicants failed to disclose these public disclosures to the USPTO. Under Wi-LAN's improper and
10 incorrect apparent applications of the '759 patent's claims, these disclosures constitute prior art that
11 renders the claims of the '759 patent invalid under 35 U.S.C. §§ 102 and/or 103.

12 24. As a result of the acts described in the foregoing paragraphs, there exists a substantial
13 controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

14 25. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain their
15 rights regarding the '759 patent.

16 PRAYER FOR RELIEF

17 WHEREFORE, Plaintiffs respectfully request that judgment be entered in favor of
18 Plaintiffs and pray that the Court grant the following relief to Plaintiffs:

19 A. A declaration that Plaintiffs, and each of them, have and has not infringed, either
20 directly or indirectly, any valid and enforceable claim of the '759 Patent;

21 B. A declaration that the claims of the '759 Patent are invalid;

22 C. A declaration that the '759 Patent is unenforceable;

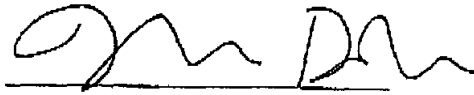
23 D. An order declaring that Plaintiffs, and each of them, are prevailing parties and that
24 this is an exceptional case, awarding Plaintiffs, and each of them, their costs, expenses,
25 disbursements and reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes,
26 rules and common law; and

27 E. Such other and further relief as this Court may deem just and proper.
28

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues and claims so triable.

DATED: December 10, 2008



Bob Steinberg (S.B.N. 126407)
LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Telephone: (213) 485-1234
Facsimile: (213) 891-8763

Sean S. Pak (S.B.N. 219032)
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

Michael W. De Vries (S.B.N. 211001)
Eli T. Ticatch (S.B.N. 234108)
Joseph K. Liu (S.B.N. 216227)
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Orange County, California 92626-1925
Telephone: (714) 540-1235
Facsimile: (714) 755-8290

Attorneys for Plaintiff
BROADCOM CORPORATION

DATED: December 10, 2008

Scott D. Baker (S.B.N. 84923)
sbaker@reedsmith.com
John P. Bovich (S.B.N. 150688)
jbovich@reedsmith.com
Jonah D. Mitchell (S.B.N. 203511)
jmmitchell@reedsmith.com
REED SMITH LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111-3922
Mailing Address:
P.O. Box 7936
San Francisco, CA 94120-7936
Telephone: (415) 543-8700
Facsimile: (415) 391-8269
Attorneys for Plaintiff
ATHEROS COMMUNICATIONS, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues and claims so triable.

DATED: December 10, 2008

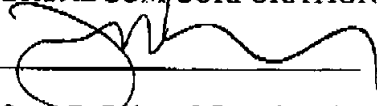
Bob Steinberg (S.B.N. 126407)
LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Telephone: (213) 485-1234
Facsimile: (213) 891-8763

Sean S. Pak (S.B.N. 219032)
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

Michael W. De Vries (S.B.N. 211001)
Eli T. Ticatch (S.B.N. 234108)
Joseph K. Liu (S.B.N. 216227)
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Orange County, California 92626-1925
Telephone: (714) 540-1235
Facsimile: (714) 755-8290

Attorneys for Plaintiff
BROADCOM CORPORATION

DATED: December 10, 2008


Scott D. Baker (S.B.N. 84923)
sbaker@reedsmith.com
John P. Bovich (S.B.N. 150688)
jbovich@reedsmith.com
Jonah D. Mitchell (S.B.N. 203511)
jmmitchell@reedsmith.com
REED SMITH LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111-3922
Mailing Address:
P.O. Box 7936
San Francisco, CA 94120-7936
Telephone: (415) 543-8700
Facsimile: (415) 391-8269
Attorneys for Plaintiff
ATHEROS COMMUNICATIONS, INC.